IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

WP(C).No. 32894 of 2004(N)

AGAINST THE ORDER IN IA.977/2004 OS.40/2004
of ADDL.MUNSIFF'S COURT, NEDUMANGAD

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PETITIONER:

SUMATHI, D/O.ROSILY, TC 76/47,
S.S.BHAVAN, ANAYARA, THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.M.R.RAJESH

RESPONDENTS:

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1. B.G.JAYASREE, MITHRALAYAM,
NEAR CSI CHRUCH, MALAYINKEEZHU,
MALAYINKEEZHU P.O.
THIRUVANANTHAPURAM DISTRICT.

2. SASI, TC.76/47, S.S.BHAVAN, ANAYARA,
NEDUMANGAD, THIRUVANANTHAPURAM DISTRICT.

3. RAJAMMA, KUSAVANKOTTUKONATHU
KIZHAKKUMKARA PUTHEN VEEDU, CHAIKULAM,
VEERANAKAVU VILLAGE, NEDUMANGAD,
THIRUVANANTHAPURAM DSITRICT.

4. INDIRA BAI, KUSAVANKOTTUKONATHU
KIZHAKKUMKARA PUTHEN VEEDU, CHAIKULAM,
VEERANAKAVU VILLAGE, NEDUMANGAD,
THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.SUMAN CHAKRAVARTHY
R1 BY ADV.SRI.T.A.UNNIKRISHNAN
SRI.K.SATHEESH KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.32894/04

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF THE PLAINT A-SCHEDULE IN O.S.40/04.

EXT.P1(A) – TRUE COPY OF PLAINT B SCHEDULE IN DO.

EXT.P1(B) – TRUE COPY OF PLAINT C SCHEDULE IN DO.

EXT.P2 – TRUE COPY OF COMMN. REPORT AND ROUGH SKETCH ATTACHED THERETO DT.1.1.04.

EXT.P3 – TRUE COPY OF THE COMMN. REPORT AND ROUGH SKETCH ATTACHED THERETO DT.31.3.04.

EXT.P4 – TRUE COPY OF ORDER DT.6.4.04 IN I.A.977/04 IN O.S.40/04.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

W.P.(C) No. 32894 OF 2004

Dated this the 6th day of July, 2007

JUDGMENT

Ext.P4 order of the Additional Munsiff, Nedumangad on IA No.977/04 filed by the 1st respondent-plaintiff commanding the removal of an obstruction placed by the petitioner-first defendant and others on suit C schedule path way is under challenge in this writ petition initiated by the 1st defendant under Article 227 of the Constitution. It is conceded in the writ petition itself that against Ext.P4 order the petitioner had filed CMA No. 8/04 before the Sub Court, Nedumangad and that the above CMA was dismissed by the Sub Court on the ground that Ext.P4 is not an appealable order. It is also conceded in the writ petition that the petitioner filed WP(C) No.19968/04 challenging the order of the Sub Court dismissing CMA No.8/04and that this Court dismissed WP(C) No.19968/04.

2. But the petitioner tries to maintain this writ petition on the theory that the order impugned in WP(C) 19968/04 was the judgment in CMA No.8/04 which was one of the dismissal of the CMA on the ground of maintainability and that what has been confirmed by this Court under the judgment in WP(C) 19968/04 is only the judgment in CMA No.8/04 and therefore their cannot be any merger of Ext.P4 with this Court's

judgment in WP(C) No.19968/04.

I have gone through the judgment in WP(C)19968/04 I notice that this Court has examined the merits of Ext.P4 and has refused to interfere with the same. All the grounds raised in this Writ Petition will stand repelled in view of the judgment of this Court in WP(C)19968/04. The Writ Petition will stand dismissed. I however, refrain from awarding cost to the 1st respondent lest the same should reflect badly on the counsel for the petitioner who made very enthusiastic and fairly learned submissions before me.

PIUS C. KURIAKOSE, JUDGE

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